

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 92-023-R - ORDER NO. 93-1148 ✓
DECEMBER 20, 1993

IN RE: South Carolina Electric & Gas) ORDER GRANTING WITHDRAWAL
Company - Fulfilling the) OF STUDY, ORDERING ORAL
requirements of Commission) ARGUMENTS AND DENYING
Order No. 92-781.) PETITION FOR DECLARATORY
) ORDER

This matter comes before the Public Service Commission of South Carolina (the Commission) on the hearing required by Commission Order No. 92-781, which ordered South Carolina Electric & Gas (SCE&G or the Company) to hire an independent consultant to examine its transit system, and to show cause why the recommendations of the independent expert should not be put into effect. As the result of Order No. 92-781, SCE&G hired ATE Management and Service Company, Inc. (ATE) to study the SCE&G transit system, and to submit a formal report on it. Order No. 92-781 also required SCE&G to show cause why the consultant's recommendations should not be put into effect.

A hearing was held on this matter on October 6 and 7, 1993. Belton T. Zeigler, Esquire and Henry J. White, Esquire represented SCE&G. Carl F. McIntosh, Esquire represented the South Carolina Department of Consumer Affairs. Robert Guild, Esquire and William H. Hines, Esquire represented the Women's Shelter and South Carolina Fair Share. John C. Ruoff appeared pro se. Robert Guild, Esquire represented the Columbia Council of Neighborhoods. Thomas

E. Ellenberg, Esquire represented the City of Columbia. Mamie L. Jackson appeared pro se, and F. David Butler, General Counsel and Florence P. Belser, Staff Counsel, represented the Commission Staff.

SCE&G presented the testimony of Jimmy Addison and Maxine Marshall. Marshall, a consultant for ATE, presented evaluations of SCE&G's transit service in both Columbia and Charleston in the form of two separate reports. David Reeves and Ron Robinson also appeared as public witnesses.

It is necessary for the Commission to consider a number of motions made during the course of the hearing.

Jimmy Addison, Vice President and Controller of SCE&G testified as to the alleged losses suffered by the Company as a result of the Commission transit Order Nos. 92-781 and 92-928. The admissibility of the testimony of Addison was challenged by intervenor attorney Guild.¹ Guild argued that the matter attested to by Addison and Addison's exhibit were not admissible into evidence, since Addison used annualized figures, not historical test year numbers. Second, Guild argued that Addison's testimony and exhibit were irrelevant, considering the scope of the Commission's Order, i.e. that the Company was to show cause why the consultant's recommendations should not be put into effect. After an examination of this matter, the Commission believes that Addison's testimony and exhibit should remain in the record as evidence. During the course of the hearing, SCE&G attempted to

1. The Chairman of the Commission accepted Addison's testimony and exhibit into the record, subject to Guild's objections.

show cause why the consultant's recommendations should not be put into effect by setting forth evidence that the recommendations would add to the financial losses being suffered by the Company under its transit system. Therefore, we believe that Addison's testimony and exhibit are relevant when considered in this light. It should be noted that in the Commission's opinion, annualized figures were appropriate in the present case, since only three months of actual data were available since the time that the Company's new rates as promulgated by Order Nos. 92-781 and 92-928 had been put into effect. Therefore, we believe that annualized figures in this context were useful as a potential guide to the Commission in examining the potential further losses that SCE&G could incur as a result of putting into effect the consultant's recommendations.

Second, the admissibility of Jimmy Addison's affidavit to the Circuit Court in the Circuit Court bus appeal was challenged. The Commission has examined this document and finds that it and its accompanying exhibits should be excluded from the record as being cumulative to the testimony and exhibit as allowed into the evidence above. Addison's affidavit and exhibit to the Circuit Court shall therefore be excluded from the record.

Next, the Commission has considered three motions to strike propounded by Dr. John Ruoff of South Carolina Fair Share. Ruoff moves to strike certain exhibits and accompanying text of Maxine Marshall of ATE. The matters referred to by Dr. Ruoff consist of exhibits and text from the Columbia and Charleston reports having to do with weekday productivity, ridership on certain routes, and

other matters. (Specifically, these are Exhibits V-1 and V-2 at pages 81 and 82 of the Columbia Report; Exhibit V-1 at page 73 of the Charleston Report; associated text on pages 80 of the Columbia Report and 72 of the Charleston Report; Exhibit III-3 on page 38 of the Columbia Report; Exhibit III-2 on page 36 of the Columbia Report; Exhibit III-3 on page 37 of the Charleston Report; Exhibit III-1 on page 35 of the Columbia Report; and Exhibit III-1 on page 35 of the Charleston Report.) Ruoff argues that Marshall and ATE have used questionable statistical methods. First, Ruoff argues that the figures furnished to Marshall are hearsay from another source and are not original figures. Second, Ruoff argues that Marshall's inability to explain statistical models used to develop the exhibits, mandate exclusion of the exhibits from the record, because of the fact that the proper statistical basis cannot be questioned. Third, Ruoff alleges a sample size of one and an infinite confidence level on all statistical studies contained in the report are improper methodology. The Commission has examined the exhibits and text proposed to be stricken by Ruoff and agrees that these matters should be stricken for the reasons cited by Dr. Ruoff.

Fourth, SCE&G moved conditionally during the hearing that if the motions by Dr. Ruoff to strike were granted, the Company should be allowed to withdraw the ATE consultant's reports and to hire another expert to develop a study of the SCE&G transit system. The Commission hereby grants the Company's motion to withdraw the reports, since the statistical basis upon which certain portions of the reports were based has been shown to be faulty. The

Commission, however, does not, at this time, grant SCE&G's motion to hire another expert to study its transit system.

Considering the above-stated rulings, the Commission believes that a ruling on the admissibility of Hearing Exhibit 11 is unnecessary, since that particular document came from the workpapers of the consultant obtained during the process of the studies which have now been withdrawn. This motion is, therefore, moot.

The Commission would note that since the studies upon which all of the recommendations of ATE were developed have been withdrawn from this case, the Commission now has no basis upon which to make a decision upon the recommendations made by the consultant. The Commission, however, is concerned about this matter and hereby orders that oral arguments be held in order to obtain recommendations from the parties as to what further actions, if any, should be taken with regard to the South Carolina Electric & Gas transit system.²

Finally, the Commission would note that the Company has petitioned this Commission for a Declaratory Order that the Due Process and taking clauses of the United States and South Carolina Constitutions, along with sound regulatory practice, require that SCE&G's transit fares be set at a level producing a reasonable and nonconfiscatory rate of return on its transit operations standing alone. The intervenors submitted a return to the petition. The Commission has examined this document and the Memorandum submitted

2. The Commission takes no position at this time on the status of the Columbia Yellow Light Committee recommendations.

by the Company in support of its Petition. The Commission disagrees with the points made in the Company's Memorandum, and must therefore deny the Petition. In our opinion, the cases of State ex rel Daniel v. Broad River Power Company, 157 S.C. 1, 153 S.E. 537 (1929); Broad River Power Company v. South Carolina ex rel Daniel, 281 U.S. 537 (1930); City of Columbia v. Tatum, 174 S.C. 366, 177 S.E. 541 (1934); and S.C. Code Ann. §58-27-120 (1976, as amended) all mandate an opposite conclusion from that proffered by the Company. In sum, these cases hold, and this statute states by implication that the transit system is inextricably linked with the provision of electric service to the City of Columbia. As we see it, as long as SCE&G provides electricity to the City of Columbia, under present law, it must also provide transit service. The fact that the transit system is suffering a loss is unfortunate, but under the above-cited cases and statute, this loss does not prevent us from ordering SCE&G to continue to provide transit service. We, therefore, believe that these cases and this statute prevent the Commission from granting the Petition for Declaratory Order sought by SCE&G. The Petition for the Declaratory Order must therefore be denied.

IT IS THEREFORE ORDERED THAT:

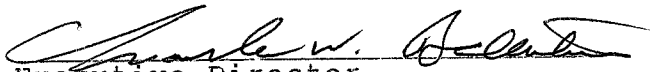
1. The motions presented during the hearing of the case are disposed of as stated above.
2. The Commission shall hold oral arguments in order to obtain recommendations from the parties as to how to proceed further in this case.
3. The Petition for Declaratory Order is denied.

4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)